

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs January 30, 2008

**STATE OF TENNESSEE v. RUFUS LAMAR MONTGOMERY**

**Appeal from the Circuit Court for Blount County**  
**No. C-16406     Jon Kerry Blackwood, Judge**

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**No. E2007-01401-CCA-R3-CD - Filed March 13, 2008**

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The defendant, Rufus Lamar Montgomery, pleaded guilty to possession of less than .5 grams of cocaine with intent to sell in exchange for a three-year sentence to be served as 90 days' incarceration followed by probation. Within three months, the trial court had twice revoked the defendant's probation. Upon the second revocation, the trial court ordered the defendant to fully serve the balance of his sentence. The defendant concedes that he violated the terms of probation but argues that the trial court erred by ordering him to serve the balance of the sentence in the Department of Correction. Discerning no error, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE, J., joined. D. KELLY THOMAS, JR., J., not participating.

Stacey Nordquist, Assistant District Public Defender (at trial); and J. Liddell Kirk, Knoxville, Tennessee (on appeal), for the appellant, Rufus Lamar Montgomery.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulaney, Assistant Attorney General; and Robert Headrick, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On February 16, 2007, the defendant agreed to waive his right to grand jury review and pleaded guilty by information to one count of possession of cocaine with intent to sell. Pursuant to a plea agreement, the defendant received an agreed sentence of three years to be served as 90 days' incarceration followed by probation. The trial court awarded 48 days of pretrial jail credit, and the defendant was released from jail on March 10, 2007. Three weeks later, a probation violation warrant issued alleging that the defendant had failed to report to his probation officer, had failed to pay his court costs and probation fees, and had been arrested and charged with driving on a revoked license. On April 30, 2007, the trial court revoked the defendant's probation and ordered him to serve 30 days in jail before being released to probation a second time. The trial court awarded 27 days of jail credit and the defendant was released from jail on May 1, 2007. Thirteen

days later, a second probation violation warrant issued alleging that the defendant had failed to report to his probation officer and had been arrested on May 5, 2007, and charged with possession of a Schedule II controlled substance. The warrant was later amended to reflect that the defendant had pleaded guilty to that charge in exchange for a sentence of 120 days' incarceration.

A revocation hearing was held on June 25, 2007. At that hearing, probation officer Roger Montgomery testified that although he had been assigned to supervise the defendant, he did not get the opportunity to do so because the defendant had failed to report as required after his release from jail. Mr. Montgomery recommended that the defendant be ordered to serve the balance of his sentence, noting that he did not "see any probability of [the defendant] reporting to probation as ordered."

The defendant testified that he had intended to reside with his sister upon his release but was unable to contact her because she was out of town. He stated that he was unable to contact Mr. Montgomery because he was "in the process of trying to get moved." The defendant claimed that his niece failed to pick him up after his release and that he was forced to walk to his aunt's house. After his aunt refused to let him into the house, he walked to a cousin's house where "they [were] doing drugs and stuff." The defendant admitted that he did not try to contact Mr. Montgomery by telephone and stated that, although he "could have got a ride [to Mr. Montgomery's office] with somebody," he "didn't want to take a chance of riding with nobody that didn't have no license." The defendant also admitted that he had pleaded guilty to possession of a Schedule II controlled substance following his May 5, 2007 arrest. The defendant stated that he was "addicted to cocaine and alcohol and pills" and that he "just need[ed] to be in rehab." He claimed that his sister "was going to try to get [him] in rehab." The defendant asked that the trial court reinstate his probation so that he could seek treatment for his drug addiction.

At the conclusion of the hearing, the trial court revoked the defendant's probation on the basis of the defendant's failure to report to Mr. Montgomery and the defendant's arrest and subsequent conviction.

A trial court may revoke a sentence of probation upon a finding by a preponderance of the evidence that the defendant has violated the conditions of his release. T.C.A. § 40-35-311(e) (2006); *Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). A revocation will be upheld absent a showing that the trial court abused its discretion. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). In order to establish that the trial court has abused its discretion, the defendant must show that there is no substantial evidence to support the determination that he violated his probation. *Id.* (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). Relief will be granted only when "the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved." *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)). Upon finding a violation, the trial court may "revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered." T.C.A. § 40-35-311(e). Furthermore, when probation is revoked, "the original judgment so rendered by the trial judge shall be in full force and effect from the date of the

revocation of such suspension.” *Id.* § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. *See State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

Here, the record establishes that the defendant failed to report as ordered and was arrested and charged with possession of cocaine only four days after being released from jail on his conviction for possession of cocaine. The defendant admitted that he had failed to report and that he had pleaded guilty to possession of cocaine related to his arrest while on probation. He blamed his failure to comply with the terms of his probation on his drug problem and expressed a desire to enroll in a drug treatment program. Although the defendant’s desire to enter drug treatment is commendable, the duty is upon the defendant to first comply with the rules of his probation. This defendant failed to do so despite being given more than one chance. The trial court did not abuse its discretion by revoking the defendant’s probation and ordering incarceration.

Accordingly, the judgment of the trial court is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE